

**TCEQ AIR QUALITY PERMIT NUMBER 139561
TCEQ DOCKET NUMBER 2019-0624-AIR**

APPLICATION BY	§ BEFORE THE
TEXAS LNG BROWNSVILLE, LLC	§ TEXAS COMMISSION ON
TEXAS LNG BROWNSVILLE	§ ENVIRONMENTAL QUALITY
BROWNSVILLE, CAMERON COUNTY	§

**THE CITY OF PORT ISABEL AND THE CITY OF SOUTH PADRE ISLAND'S
JOINT REPLY TO THE EXECUTIVE DIRECTOR'S RESPONSE TO
HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION**

I. Introduction

The City of Port Isabel, Texas ("Port Isabel") and the City of South Padre Island, Texas ("South Padre") (collectively, "the Cities") file this joint reply to the Texas Commission on Environmental Quality ("TCEQ") Executive Director's ("ED") response to the Cities' requests for a contested case hearing regarding the above-referenced matter. The Cities would respectfully show that they are, indeed, a "affected persons" under 30 TEXAS ADMINISTRATIVE CODE 55.203, despite the ED's recommendation to the contrary. The Cities would further show that the ED's recommendation of denial is based on a misapplication of the relevant law and misconception of certain key facts. Specifically, the Cities would re-emphasize the extremely close proximity of their city limits, city facilities, and environmentally sensitive ecosystems in relation to the proposed liquefied natural gas (LNG) export terminal ("the site") at issue. Given this proximity and the potential impact the site will have on the Cities' public health, welfare, and environment, it is clear that the Cities hearing requests should be granted.

**II. Port Isabel is an "Affected Person" under the TEXAS ADMINISTRATIVE CODE despite the
Executive Director's Recommendation to the Contrary.**

While the ED properly cited to the appropriate authority in determining whether the City of Port Isabel is an "Affected Person" and therefore, entitled to a contested case hearing, the ED misapplied such authority and misinterpreted certain key facts.

For example, a number of "Affected Person" factors enumerated in 30 TAC Section 55.203 apply to Port Isabel in this situation and collectively, demonstrate that the city is an "Affected Person." Such factors include, but are not limited to, the following:

- the likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;¹
- the likely impact of the regulated activity on use of the impacted natural resource by the person;² and

¹ Tex. Admin. Code § 55.203(c)(4).

² Tex. Admin. Code § 55.203(c)(5).

- for governmental entities, their statutory authority over or interest in the issue relevant to the application.³

Under section 55.203(c)(7), Port Isabel constitutes an affected person based on its statutory authority over or interest in the issues relevant to the application in dispute. The TEXAS HEALTH AND SAFETY CODE provides that the governing body of a municipality may enforce any law that is reasonably necessary to protect the public health.⁴ The statute further states, “[A] municipality has the powers and rights as are otherwise vested by law in the municipality to . . . abate a nuisance . . .”⁵ In addition to its statutory authority over issues relevant to this application, Port Isabel is seeking to protect its economic interests, including city-owned property and facilities, which will undoubtedly be negatively impacted by the proposed site.

Moreover, Port Isabel is seeking to protect public health and welfare by protecting participants in its city programs and its employees from adverse health effects caused by air pollution. Port Isabel’s interests are protected by the law under which this application is being considered, and a reasonable relationship exists between the city’s interests and the regulated activity. Finally, Port Isabel’s interests as a governmental entity are not common to members of the general public. Therefore, Port Isabel has a justiciable interest in this matter, and that interest is affected by the application; therefore, Port Isabel qualifies as an affected person.

The Office of Public Interest Counsel (OPIC) agrees with Port Isabel’s analysis and recommended that its hearing request be granted.⁶ The OPIC reached this recommendation upon seeing the close proximity between Port Isabel and the site, as well as realizing that there are “no distance restrictions imposed by law on whom may be considered an affected person.”⁷ Interestingly, the ED did not reach the same recommendation, even though he recognized that “for air quality permits, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person’s interests because of the dispersion and effects of individual air contaminants emitted from a facility.”⁸

Attached hereto as “Exhibit A” is a map depicting Port Isabel’s city limits in relation to the proposed site. The yellow area represents the boundary of the city limits while the red line represents the location of the proposed site. Exhibit A clearly shows that the proposed site is not only located within one mile of the city limits, but it actually directly abuts Port Isabel’s city limits.⁹

³ Tex. Admin. Code § 55.203(c)(7).

⁴ Texas Health & Safety Code § 121.003(a).

⁵ Texas Health & Safety Code § 382.113(a)(1).

⁶ Office of Public Interest Counsel’s Response to Hearing Requests and Request for Reconsideration, TCEQ Docket No. 2019-0624-AIR, pg. 20 (May 20, 2019).

⁷ Office of Public Interest Counsel’s Response to Hearing Requests and Request for Reconsideration, TCEQ Docket No. 2019-0624-AIR, pg. 6 (May 20, 2019).

⁸ Executive Director’s Response to Hearing Requests and Requests for Reconsideration, TCEQ Docket No. 2019-0624-AIR, pg. 6 (May 20, 2019).

⁹ The ED notes in his response that the proposed site is located right off of State Highway 48, which directly abuts Port Isabel’s city limits (“The Applicant provided the following directions to the site: From the intersection of State Highway 48 and State Highway 550, continue on State Highway 48 for 12.2 miles, the gate to the location is on the right, Brownsville, Cameron County.”); Executive Directors Response to Hearing Requests and Requests for Reconsideration, TCEQ Docket No. 2019-0624-AIR (pg. 1).

In addition, Exhibit A demonstrates the close proximity of the Port Isabel Police Department Shooting Range to the site. It is less than one mile between it and the facility location. City employees and police officers spend significant time outdoors at this facility for various activities, such as target practice and fitness training. The outdoor nature of these strenuous activities places the participants at greater risk of harm due to the air pollutants the site will emit.

The Port Isabel animal shelter is also located within its city limits and close to the facility. It houses animals both outdoors and indoors. City employees and volunteers are placed at a greater risk of harm at this facility due to the air pollutants the site will emit.

The Laguna Madre Park and Laguna Madre Youth Center are also located in Port Isabel's city limits. These popular facilities offer outdoor exercise and sports activities to the City's youth and adults. The outdoor nature of these strenuous activities places the participants, as well as city staff, volunteers and spectators, at greater risk of harm due to air pollutants.

The Artisan Apartment and Port Isabel Housing Authority are also located in Port Isabel's city limits and owned by the Port Isabel Housing Authority. In addition to low-income persons, these buildings also house the elderly and disabled, who may be immune-compromised and therefore, at a greater risk of harm from air pollution. This presents a potential environmental justice issue, which the TCEQ should take into account before denying Port Isabel's hearing request.

The aforementioned Port Isabel facilities represent only a handful of the city properties and interests which will be adversely impacted by the proposed site. Given the proximity of these facilities to the proposed site, it is clear that the regulated activity will have an impact on the health and safety of the residents of Port Isabel, as contemplated by Tex. Admin. Code § 55.203(c)(4). As such, the residents of Port Isabel are situated differently than the general public, despite the ED's finding to the contrary.

Furthermore, the proposed site has the potential to adversely impact environmentally sensitive ecosystems and natural resources within Port Isabel's city limits. Attached hereto as "Exhibit B" is a map depicting an area of the Laguna Atascosa National Wildlife Refuge. The Bahia Grande Unit of the refuge is located within Port Isabel's city limits and directly abuts the location of the proposed site. This area provides habitat for endangered species and sensitive natural resources. Given the proximity of this refuge to the proposed site, it is clear that the regulated activity will have an impact on the use of Port Isabel's natural resources, as contemplated by Tex. Admin. Code § 55.203(c)(5). Port Isabel invested significant resources into improvements in this lagoon system and its citizens regularly fish and kayak in those lagoons. There are several channels that interconnect those lagoons in order to enhance this sensitive environmental area. They are clearly visible on Exhibit A. Port Isabel helped construct those channels.

Based on the foregoing, it is abundantly clear that the City of Port Isabel is an "Affected Person" under the TEXAS ADMINISTRATIVE CODE and therefore, its hearing request should be granted.

Port Isabel agrees with the ED and OPIC on the issues that they recommend for referral to SOAH.

III. South Padre is an “Affected Person” under the TEXAS ADMINISTRATIVE CODE despite the Executive Director’s Recommendation to the Contrary.

The analysis above also applies to the City of South Padre Island. South Padre is also an “Affected Person” under the TEXAS ADMINISTRATIVE CODE as its city limits, city facilities, and environmentally sensitive ecosystems are in close proximity to the proposed site. Given the close proximity, the proposed site will impact the health and safety of South Padre’s residents, as well as its sensitive natural resources. It is important to note that the OPIC agrees with this assessment, recommending that South Padre’s hearing request be granted.¹⁰ The ED recommended that South Padre Island was not an “Affected Person,” based on its distance from the site, despite the fact that there are “no distance restrictions imposed by law on whom may be considered an affected person.”¹¹ South Padre would point to its previously filed hearing requests and comments in order to show that the proposed site will, undoubtedly, impact the health and safety of its residents, as well as natural resources, despite the ED’s characterization that South Padre is not located “close enough” to the proposed site for it to qualify as an “Affected Person.”

IV. CONCLUSION

The Cities of Port Isabel and South Padre would respectfully show that they, indeed, qualify as “Affected Persons” as contemplated by the TEXAS ADMINISTRATIVE CODE and therefore, are entitled to a contested case hearing. Without question, the proposed site will impact the Cities’ natural resources, as well as the health and safety of their respective residents, despite the ED’s recommendation to the contrary. The Cities each request that the TCEQ to grant their hearing requests and allow them the opportunity to participate in this important decision which could adversely affect its citizens and could essentially prohibit the Cities from protecting their citizens’ public, welfare, and environment.

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¹⁰ Office of Public Interest Counsel’s Response to Hearing Requests and Request for Reconsideration, TCEQ Docket No. 2019-0624-AIR, pg. 20 (May 20, 2019).

¹¹ Office of Public Interest Counsel’s Response to Hearing Requests and Request for Reconsideration, TCEQ Docket No. 2019-0624-AIR, pg. 6 (May 20, 2019).

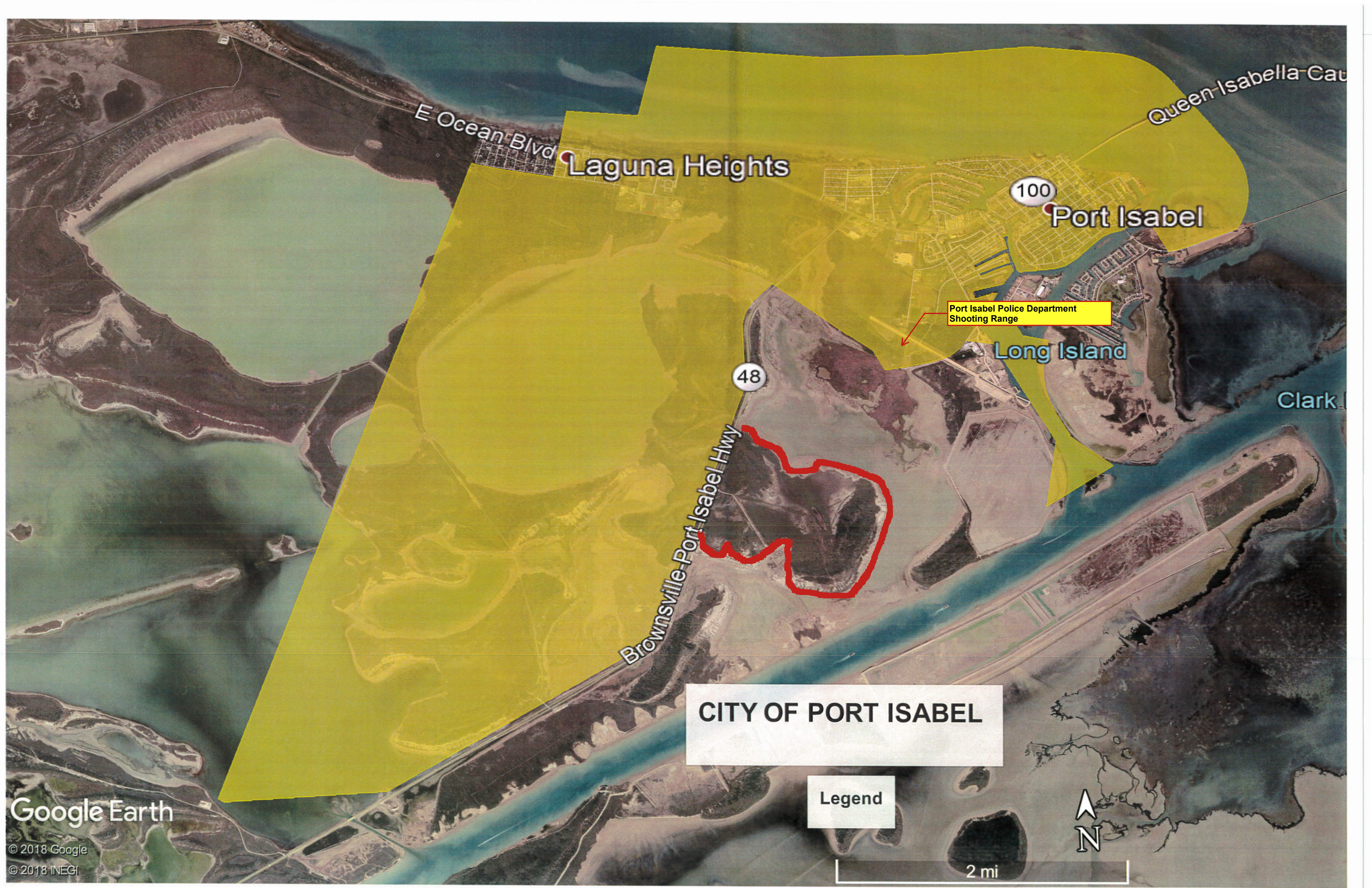
CERTIFICATE OF SERVICE

I certify that on June 3, 2019, the foregoing Joint Reply to the Executive Director's Response to Hearing Request for Air Quality Permit 139561 for Texas LNG Brownsville, LLC, was filed with the TCEQ's Office of the Chief Clerk via electronic submittal, and a copy was served to all requestors, the Office of Public Interest Counsel, and the Applicant via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Duncan C. Norton

EXHIBIT A



E Ocean Blvd

Laguna Heights

Queen Isabella-Cat

100

Port Isabel

Port Isabel Police Department
Shooting Range

Long Island

Clark

48

Brownsville-Port Isabel Hwy

CITY OF PORT ISABEL

Legend



2 mi

Google Earth

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EXHIBIT B



Q Search

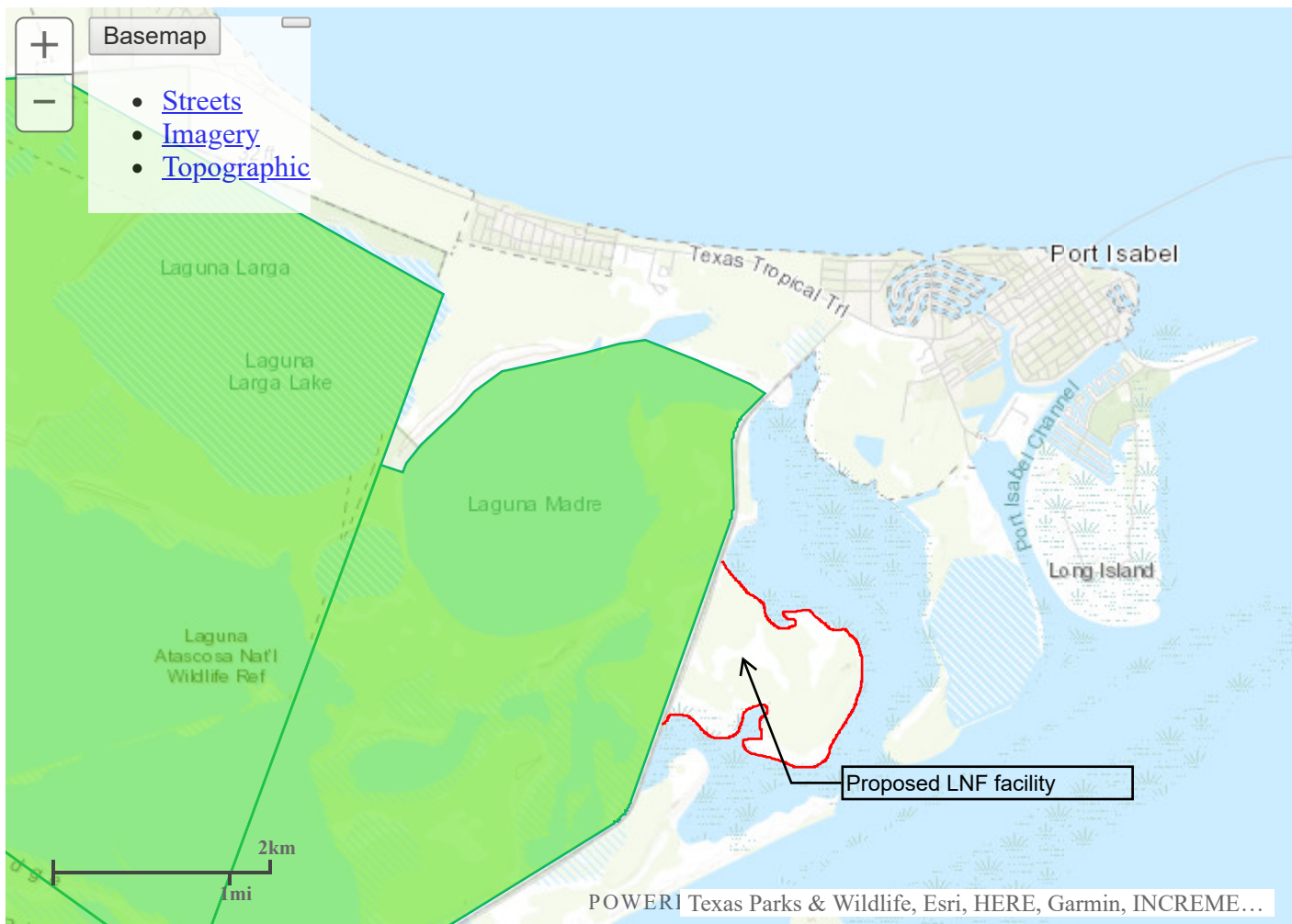
[\(https://www.fws.gov/\)](https://www.fws.gov/)☐ All Refuges

U.S. Fish & Wildlife Service



Laguna Atascosa

(/refuge/Laguna_Atascosa/)

National Wildlife Refuge | Texas

- ☐ National Wildlife Refuges
- ☐ Waterfowl Production Areas
- ☐ National Wildlife Refuges, easement
- ☐ Wetland Management Districts
- ☐ Agreement
- ☐ Secondary to other federal agency
- ☐ Partial Interest
- ☐ Visitor Contact Locations
(Click on the icon for additional information)

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